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FEDERAL ELECTION COMMISSION

In the Matter of Andrew Heaney et. al.

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MUR 7006

ANSWER OF ALLISON HEANEY AND SKAGGS-WALSH, INC.

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This Firm represents Allison Heaney ("Ms. Heaney") and Skaggs-Walsh, Inc. ("Skaggs-Walsh") (collectively, "Respondents"), in connection with the above matter and, we thank you for the opportunity to present this correspondence to demonstrate that no further action should be taken by the Federal Election Commission (the "Commission") against Ms. Heaney or Skaggs-Walsh. This responds to the letters from the Commission directed to Ms. Heaney and Skaggs-Walsh dated February 11, 2016 (the "February 11, 2016 Letters"). Respondents specifically deny any allegations that either violated the Federal Election Campaign Act of 1971, as amended, and answer further and respond as follows.

A. The Complaint Must Be Dismissed as To Ms. Heaney and Skaggs-Walsh Because the Complaint Fails to Give Notice in Compliance with 52 U.S.C. § 30109(a)(1) and 11 C.F.R. §§ 111.5 & 111.6

1. The February 11, 2016 Letters state that the Commission received a Complaint that Respondents may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). The Complaint, which was attached to the February 11, 2016 Letters was filed by Campaign for Accountability and apparently received by the Commission on February 4, 2016, and docketed in MUR 7006 (The "Complaint").

2. The February 11, 2016 Letters do not specify the violations alleged against Ms. Heaney or Skaggs-Walsh or the conduct which forms the bases for the alleged violations.

Instead, because this matter was generated by the filing of the Complaint, they refer exclusively to the contents of the Complaint.

3. Among other requirements, the Commission's regulations require a Complainant to "clearly identify as a respondent each person or entity who is alleged to have committed a violation" and provide "a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 C.F.R. § 111.4.

4. Here, however, the Complaint identifies *only* as respondents: Andrew Heaney, Heaney for Congress and Patrick Gosselin, Treasurer, Heaney Energy Corp., Little Deep, LLC, Submarine Rock, LLC, New York Jobs Council ("NYJC") and Elizabeth B. White, Treasurer. Neither Ms. Heaney nor Skaggs-Walsh is identified in the Complaint as a respondent or as having committed any violations of the Act.

5. The Complaint makes no allegations of wrongdoing against either Ms. Heaney or Skaggs-Walsh. Indeed, the Complaint omits mention of any conduct whatsoever by Ms. Heaney. The only reference in the Complaint to Skaggs-Walsh is contained in Paragraph 8, wherein it is alleged that Skaggs-Walsh made certain contributions to the NY Jobs Council, a super PAC purportedly supporting Andrew Heaney's candidacy for Congress. The Complaint does not allege that the making of said contributions was unlawful.¹

6. In complaint generated matters such as this, the Act and the Commission's regulations require the Commission to provide notice of the claims and allegations to respondents identified in a Complaint by forwarding a copy of the Complaint to them. It is the

¹ The Complaint alleges certain improprieties in the interconnectedness between NYJC and Andrew Heaney's campaign such that it was unlawful for NYJC to *receive* contributions in excess of the contribution limits contained 52 U.S.C. 30116. However, the Complaint does not (and could not) assert that Skaggs-Walsh or Ms. Heaney were aware of any such connections which would render the *making* of such contributions unlawful by either of them.

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Complaint itself which identifies those who have allegedly violated the act and specifies the factual bases of the alleged violations, and it is the forwarding of the Complaint by the Commission which provides detailed notice of the grounds for the violations alleged. The procedure is designed to provide clear notice of the allegations in order to afford respondents a fair opportunity to respond before the Commission determines whether there is cause to proceed further. 52 U.S.C §30109(a)(1); 11 C.F.R. §§ 111.5 & 111.6.² “The notice procedures set out in Section [30109(a)(1)] are for the benefit of those [alleged to have] violated the Act.” Nader v. Fed. Election Comm’n, 823 F. Supp. 2d 53, 68 (D.D.C. 2011). Such notice is a precondition to the Commission proceeding and a matter must be dismissed in the absence of strict compliance with the notice requirements.

7. The MUR must be extinguished against Ms. Heaney and Skaggs-Walsh because the Complaint (a) does not identify either of them as a respondents and (b) does not allege a violation of the Act or the Commission’s regulations by either of them. They are being arbitrarily asked to defend themselves against unknown and un-asserted claims. Neither the Act nor the Commission’s regulations, provide for an investigation against a respondent who has not first been provided with “a clear and concise recitation of the facts which describe a violation of a statute or regulation” and a fair opportunity to address those allegations. 11 C.F.R. §§ 111.4 – 111.6. In this MUR, such has not occurred.

² In non-complaint generated matters, the Commission’s procedures require the Commission to send notice to the respondent “setting forth the basis of the referral and potential violations of the Act and/or Commission regulations that arise based on the referral.” Fed. Reg. Vol 74, No. 148, p. 38617.

B. The Failure to Provide Adequate Notice Violates Constitutional Due Process Requirements

8. The failure to provide Skaggs-Walsh and Ms. Heaney notice of the specific violations of the Act alleged and/or the factual grounds to support such violations violates their due process rights under the United States Constitution.

9. It is fundamental that due process requires, at minimum, notice of the charges leveled against a subject and a fair opportunity to respond. In re Gault, 387 U.S. 1, 33, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967); Amsden v. Moran, 904 F.2d 748, 753 (1st Cir. 1990) (cert. den., 498 U.S. 1041, 111 S. Ct. 713 (1991)) ("The essentials of procedural due process comprise notice of the charges and a reasonable chance to meet them."); U.S. v. Baker, 807 F.2d 1315, 1323 (6th Cir. 1986) ("One of the most fundamental requirements of due process is that an individual must receive adequate notice of the charges or claims being asserted against him."). "Notice, to comply with due process requirements, ... must set forth the alleged misconduct with particularity." In re Gault, 387 U.S. at 33. "[D]ue process notice contemplates specifications of acts or patterns of conduct, not general, conclusory charges unsupported by specific factual allegations." Spinelli v. City of New York, 579 F.3d 160, 171-72 (2d Cir. 2009). Indeed, the Commission's regulations are designed to ensure that respondents are given adequate notice of the allegations against them, by requiring complainants to provide "a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 C.F.R. § 111.4.

10. Where the Complaint here does not set forth *any* facts describing a violation of the Act by Ms. Heaney or Skaggs-Walsh or even identify the statutory or regulatory provisions they allegedly violated, the most basic due process requirements have not been fulfilled. As such, the MUR must be extinguished as to Ms. Heaney and Skaggs-Walsh.

C. The Complaint Does Not Allege Facts Showing Any Violations of the Act By Ms. Heaney or Skaggs-Walsh.

11. The Commission should also take no further action for substantive reasons because the complaint fails to state a claim for violations of the Act against either Ms. Heaney or Skaggs-Walsh. It is well-settled that the burden lies with the complainant to articulate and allege with specificity in the Complaint facts sufficient to make out a violation of the Act before the Commission may find cause to proceed. E.g. Nader v. Fed. Election Comm'n, 823 F. Supp. 2d 53, 60 (D.D.C. 2011) (affirming dismissal of complaint in MUR 6021 where the complainant did not provide specific facts sufficient to demonstrate that each respondent "made expenditures in coordination with the Kerry-Edwards Campaign" even though the complaint contained 575 pages of circumstantial evidence and noting further that "it is not the FEC's burden to fill in the necessary blanks in Nader's complaint"). The Commission has stated further that "unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true," and "purely speculative charges" ... "do not form an adequate basis to find reason to believe that a violation of the FECA has occurred." Statement of Reasons, Federal Election Commission, MUR 4960 (Hillary Rodham Clinton for Senate Exploratory Committee, issued December 21, 2000). See, also, e.g. Factual and Legal Analysis, Federal Election Commission, MUR 6171/6172 (Cooney for Congress Committee) (dismissing complaint because "[w]ithout context or any other specific facts, this allegation is merely speculative and does not provide a sufficient threshold to support reason to believe findings").

12. The Complaint fails to set forth specific facts sufficient to make out all of the elements of a violation by Skaggs-Walsh. The Complaint merely alleges that Skaggs-Walsh made two contributions to NYJC totaling \$35,000 and that the company was led by Ms. Heaney, candidate Heaney's sister. The United States Supreme Court in Citizens United v. FEC, 558

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U.S. 310, 130 S.Ct. 876, 913, 175 L.Ed.2d 753 (2010), affirmed the constitutional right of corporations to contribute unlimited sums to independent expenditure-only political committees (so-called "super PACs"). The Complaint does not allege any improprieties by Skaggs-Walsh in making said contributions. There are certainly no allegations, nor could there be, that candidate Heaney was a director, officer or shareholder of Skaggs-Walsh or that Skaggs-Walsh was an entity "established, financed, maintained or controlled" by the candidate. Indeed, the Complaint is careful not to make such baseless allegations. See Complaint, ¶¶14-15 (identifying only the "Andrew Heaney Companies" as companies which allegedly were affiliated with the candidate and specifically omitting Skaggs-Walsh from those allegations). Similarly, the Complaint does not accuse Skaggs-Walsh, nor could it, of possessing knowledge about the alleged connections between NYJC and the Heaney campaign.

13. In short, the Complaint simply alleges that Skaggs-Walsh made contributions totaling \$35,000 to NYJC, a super PAC. Such conduct is perfectly lawful. Without more, which there is not, the Complaint as to Skaggs-Walsh must be rejected. Nader, 823 F. Supp. 2d at 60; Factual and Legal Analysis, Federal Election Commission, MUR 6021 (Democratic National Committee and Andrew Tobias) (holding that without specific facts in the Complaint showing unlawful conduct, the FEC must dismiss a Complaint which contains merely accusations and suggestions that violations of the Act have occurred).

14. Likewise, the Complaint fails to set forth facts sufficient to make out a violation by Ms. Heaney. The only mention of Ms. Heaney occurs in paragraph 8 of the Complaint, wherein it is alleged that Ms. Heaney is the sister of candidate Andrew Heaney and "leads" Skaggs-Walsh, which made a contribution to NYJC. The Complaint does not allege that she made personal contributions or was even involved in the decision of Skaggs-Walsh to make a

contribution to NYJC. In short, the Complaint does not even suggest that Ms. Heaney violated the Act and, therefore; it must be dismissed against her.

15. Skaggs-Walsh and Allison Heaney specifically deny violating the Act or the Commission's regulations.

WHEREFORE, Allison Heaney and Skaggs-Walsh, Inc. respectfully request that the Commission Dismiss the Complaint against them, and that no further action be taken.

Respectfully Submitted:

Allison Heaney and Skaggs-Walsh, Inc.
By their counsel:



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Dated: March 29, 2016